



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

D296/4

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Case File No. 004/1/07-09-2009-ECCC/OCIJ (PTC32)

Before: Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date: 15 September 2016

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PUBLIC

DECISION ON IM CHAEM'S REQUEST FOR CONFIRMATION ON THE SCOPE OF THE AO AN'S ANNULMENT APPLICATION REGARDING ALL UNRECORDED INTERVIEWS

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia is seised of “IM Chaem’s Request for Confirmation on the Scope of the AO An’s Annulment Application Regarding All Unrecorded Interviews” filed on 26 August 2016 (the “Request”)¹ by the Co-Lawyers for IM Chaem (respectively the “Co-Lawyers” and “Applicant”).

I – INTRODUCTION

1. On 4 February 2016, AO An filed in Case 004 an application for the annulment of all written records of unrecorded interviews (the “AO An’s Application”).²
2. On 5 February 2016, the Co-Investigating Judges ordered the severance of the Applicant from Case 004 and the creation of a new Case File numbered 004/1 (the “Severance Order”).³ They further instructed the Co-Lawyers in Case 004/1 to file requests for investigative action, if any, within 15 days.⁴
3. On 19 August 2016, the International Co-Investigating Judge referred AO An’s Application to the Pre-Trial Chamber.⁵
4. The Co-Lawyers filed the Request in English on 26 August 2016 and in Khmer on 1 September 2016, followed by a corrigendum.⁶ No response was filed within the deadline.

II – ADMISSIBILITY

5. At the outset, the Pre-Trial Chamber notes that the Co-Lawyers did not make any submission on the admissibility of the Request and did not offer any legal basis for it.
6. The Pre-Trial Chamber recalls that the Applicant is no longer a party to Case 004. The issue raised in the Request, made in the framework of Case 004/1, is genuine in the sense that it potentially relates to a decision to be taken in Case 004 upon a request for annulment of

¹ IM Chaem’s Request for Confirmation on the Scope of the AO An’s Annulment Application Regarding All Unrecorded Interviews, filed in English on 26 August 2016, in Khmer on 1 September 2016 and notified in both languages on 2 September 2016, D296/2.

² Case No. 004/07-09-2009-ECCC/OCIJ (“Case 004”), Application to Seize the Pre-Trial Chamber with a View to Annulment of Non-Audio-Recorded Written Records of Interview, 4 February 2016, D296.

³ Case 004, Order for Severance of IM Chaem from Case 004, 5 February 2016, D286/7 (“Severance Order”).

⁴ Severance Order, para. 9.

⁵ Case 004, Decision on AO An’s Application to Seize the Pre-Trial Chamber with a View to Annulment of Non-Audio Recorded Written Records of Interview, 19 August 2016, D296/1.

⁶ *Corrigendum* to IM Chaem’s Request for Confirmation on the Scope of the AO An’s Annulment Application Regarding All Unrecorded Interviews, 7 September 2016, D296/3.



evidence identical in both cases. However, the situation is such that the Applicant has no standing to make requests in Case 004 following the Severance Order of 5 February 2016.

7. The Pre-Trial Chamber also recalls that, pursuant to Internal Rules 74 and 76, a charged person may only seize the Pre-Trial Chamber of appeals and of applications concerning procedural defects. The *sui generis* Request lodged by the Co-Lawyers is neither an appeal nor an annulment application, but rather aims at confirming the evidence gathered in the case. In these circumstances, there is no procedural basis to intervene.

8. The Pre-Trial Chamber further takes into consideration that the investigation concerning the Applicant has been concluded since 18 December 2015⁷ and that the AO An's Application has been filed since 4 February 2016. Internal Rule 66(1) allows 15 days to request any investigative action from the conclusion of the investigation, which was extended to a further 15 days from the issuance of the Severance Order on 5 February 2016. The Pre-Trial Chamber thus considers the Request to be untimely.

9. Finally, the Pre-Trial Chamber observes that Cases 004 and 004/1 have been severed and both have their different ways. Notwithstanding the decision that will be issued regarding AO An's Application in Case 004, its impact will be limited to that very case.

III – DISPOSITION

FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY:

DISMISSES the Request as inadmissible.

In accordance with Internal Rule 77(13), the present decision is not subject to appeal.

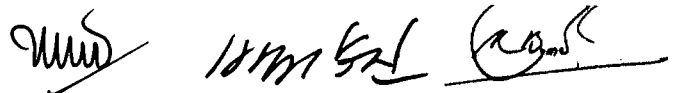
Phnom Penh, 15 September 2016

President



PRAK Kimsan Olivier BEAUVALLET

Pre-Trial Chamber



NEY Thol

Kang Jin BAIK

HUOT Vuthy

⁷ Case 004, Notice of Conclusion of Judicial Investigation Against IM Chaem, 18 December 2015, D285.